

HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.M.A.1285 OF 2005

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JUDGMENT: (Per Dr.Justice B.Siva Sankara Rao)

This is an appeal filed by the petitioner-husband to set aside the order and decree dated 10.08.2005 in O.P. No.49 of 2002 on the file of Senior Civil Judge, Amalapuram. The petitioner in said O.P. is husband and the respondent is his wife. The O.P. was filed under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955

2) The parties hereinafter called as they are arrayed in the trial Court for the sake of convenience.

3) The undisputed facts are that the respondent is legally wedded wife of the petitioner and their marriage took place on 23.05.1972 as per Hindu rites and caste custom at Bandarulanka, that the marriage was consummated, that during their wedlock three children were born viz., Rajani, Sailaja and Suresh and all are majors. The respondent filed M.C. No.20 of 1983 under Section 125 Cr.P.C for maintenance to her and the same is allowed by Additional Judicial Magistrate of the First Class, Amalapuram and subsequently the respondent joined in the Central Government job and stopped to claim maintenance from the petitioner. The allegations of the petitioner are that he tried to get her back by sending mediators several times, but in vain, that the petitioner is subjected to both mental and physical agony and prayed to dissolve the marriage between the petitioner and respondent by way of decree of divorce.

4) The respondent while denying all the material averments, alleged

that during all these years, the petitioner suffered mental agony due to the respondent is not true, seeking divorce at this age by the petitioner reveals that he has a malafide intention after begot three children who are sufficiently aged, that the petitioner while living with the respondent developed illicit contacts with one Sarvalakshmi and he is living with her, without the knowledge and consent of the respondent and kept her in a separate house and started living with her, that they got two female children, that the petitioner spending all his money for her and her children by neglecting the respondent and her three children, that the respondent with the help of her brother she passed B.Pharmacy and on the basis of qualification she got job as a pharmacist at Visakhapatnam, that she stopped claiming maintenance from petitioner that she alone educated her children, that she alone got performed her eldest daughter marriage one year ago, that the petitioner with a malafide and fraudulent intention filed the petition seeking divorce and prayed to dismiss the petition.

5) During the course of trial, the petitioner himself was examined as P.W-1 and also examined one Pulidindi Lakshmi as P.W-2, but no documents were marked. Whereas, the respondent herself was examined as R.W-1 and also examined one M.Srirajani as R.W-2 and marked the wedding card as Ex.R-1. After perusal of material on record and after hearing both sides, the learned Senior Civil Judge dismissed the petition.

6) Against the said dismissal order the petitioner filed the present appeal contending that the order and decree of the lower Court is contrary to law, weight of evidence and probabilities of the case, that the evidence regarding practicing Christianity by the wife as deposed by P.W-1 is not assailed in the cross-examination and so it is to be held that the ground of cruelty is made out and as such the learned Judge should have granted divorce, that the evidence of R.W-2 is quite contra to the evidence given by her in M.C petition as P.W-2 and so the plea of living with another woman by the husband is not established and basing on the said evidence adduced by R.W-2 dismissing the O.P without going into the actual facts is bad in law,

that the evidence of P.W-2 that she has seen a woman in the house of her brother itself is not suffice to negative the case of the husband without establishing that he is living with another woman and begot two female children through that woman, that the marriage is irretrievably broken since 1982 and so it is established that there is no hope of reunion and so divorce should have been granted in this case, that the finding of the trial Court that the husband has not tried to restore his matrimonial home is not correct as evidence shows that mediation was held twice as the evidence of R.W-1 herself and basing on the same dismissing the same is bad in law and prayed to allow the appeal by setting aside the order and decree of the trial Court.

7) Whereas the learned counsel for the respondent contended that the trial Court rightly dismissed the petition by rejecting to grant decree of divorce as the petitioner could not prove his case and for this Court while sitting in appeal there is nothing to interfere and prayed to dismiss the appeal.

8) Perused the material on record and heard the learned counsel on both sides.

9) Now, the points that arise for consideration are.-

- i. Whether the petitioner proved the guilty of cruelty and desertion against the respondent and if not, whether the impugned order and decree unsustainable and requires interference by this Court while sitting in appeal and if so with what observations?
- ii. To what result?

POINT No.i:-

10) The petition for divorce sought under Section 13(1a) and (1b) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion. There are no even any specific instances worth to complain any acts of cruelty beyond any ordinary wear and tear. To the claim of cruelty, the petitioner contended mainly that the respondent converted into

Christianity and was insisting him to convert into Christianity and harassing in this regard. The petitioner to prove cause his own contention his sister examined as P.W-2. In the cross-examination P.W-2 categorically admitted that the petitioner has been living with other lady, that clearly supports the pleading and evidence of respondent-R.W-1 and also of R.W-2 (daughter). By his cross-examination of R.W-1 or of R.W-2, the petitioner could not prove any of the acts of cruelty or desertion against the respondent. The further allegation of the petitioner is that the respondent insisted him to convert into Christianity. Except his oral evidence, there is no proof to show that the respondent is converted into Christianity and on the other hand the respondent categorically deposed that she did not convert into Christianity. Apart from it, no notices were exchanged between the parties stating the above allegations. The further allegation made against that respondent of she deserted him could not be proved by the petitioner. It is to say, the petitioner himself having been at fault cannot take advantage of his own fault, muchless to desert or harass his wife and seek for divorce with no basis. The trial Court is thus rightly discussed his petition for divorce.

11) Therefore, we do not find any merit in this appeal. Thus, for this Court while sitting in appeal, there is nothing to interfere with the dismissal decree passed by the learned Senior Civil Judge. Accordingly, point No.1 is answered.

POINT No.ii):-

12) In the result, the appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions if any pending shall stand closed.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA RAO

15th April, 2015

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